

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Mar 01, 2021**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DELISHA H.,

Plaintiff,

v.

ANDREW M. SAUL,  
COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

No. 2:20-CV-00114-JTR

ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AND REMANDING FOR  
ADDITIONAL PROCEEDINGS

**BEFORE THE COURT** are cross-motions for summary judgment. ECF No. 16, 17. Attorney Christopher Dellert represents Delisha H. (Plaintiff); Special Assistant United States Attorney Katherine Watson represents the Commissioner of Social Security (Defendant). The parties have consented to proceed before a magistrate judge. ECF No. 5. After reviewing the administrative record and the briefs filed by the parties, the Court **GRANTS** Plaintiff's Motion for Summary Judgment; **DENIES** Defendant's Motion for Summary Judgment; and **REMANDS** the matter to the Commissioner for additional proceedings pursuant to 42 U.S.C. § 405(g).

## JURISDICTION

Plaintiff filed an application for Disability Insurance Benefits on June 3, 2014, alleging disability since April 24, 2014, due to Postural Orthostatic Tachycardia Syndrome (POTS) and thoracic outlet syndrome. Tr. 71. The application was denied initially and upon reconsideration. Tr. 104-06, 108-09. Administrative Law Judge (ALJ) Laura Valente held hearings on July 12, 2016 and November 17, 2016. Tr. 37-69. The ALJ issued an unfavorable decision on February 22, 2017. Tr. 18-30. Plaintiff requested review of the ALJ's decision by the Appeals Council and the Appeals Council denied the request for review on October 12, 2017. Tr. 1-5. Plaintiff filed an action in this court on December 12, 2017 and on October 15, 2018, Chief Judge Thomas O. Rice issued an order remanding the claim for further proceedings. Tr. 1420-33.

ALJ Valente held a remand hearing on December 17, 2019, Tr. 1316-54, and issued a second unfavorable decision on January 16, 2020. Tr. 1288-1302. Plaintiff did not request review by the Appeals Council and the Appeals Council did not review the claim; the ALJ's 2020 decision is therefore the final decision of the Commissioner. Tr. 1286. Plaintiff filed this action for judicial review on March 23, 2020. ECF No. 1.

## STATEMENT OF FACTS

Plaintiff was born in 1976 and was 43 years old as of her date last insured in 2019. Tr. 1301. She has a Bachelor's degree in psychology and worked as a claims adjudicator for the Social Security Administration for 11 years. Tr. 235, 751. She developed significant left arm pain in a work-related injury, which was diagnosed as thoracic outlet syndrome. Tr. 322, 751. In 2014, likely in response to her thoracic outlet syndrome, she began having episodes of dizziness, lightheadedness, and syncope, which was eventually diagnosed as POTS. Tr. 492, 502, 506-07. In December 2014 she underwent decompression surgery for her thoracic outlet syndrome, which provided some relief of her symptoms, but she continued to have

1 neck and arm pain and occasional POTS symptoms. Tr. 882, 845-46, 3596. She  
2 was subsequently diagnosed with fibromyalgia, based on wide-spread pain and  
3 fatigue. Tr. 524.

#### 4 STANDARD OF REVIEW

5 The ALJ is responsible for determining the reliability of the claimant's  
6 allegations, resolving conflicts in medical testimony, and resolving ambiguities.  
7 *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). The ALJ's determinations  
8 of law are reviewed *de novo*, with deference to a reasonable interpretation of the  
9 applicable statutes. *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000). The  
10 decision of the ALJ may be reversed only if it is not supported by substantial  
11 evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th  
12 Cir. 1999). Substantial evidence is defined as being more than a mere scintilla, but  
13 less than a preponderance. *Id.* at 1098. Put another way, substantial evidence is  
14 such relevant evidence as a reasonable mind might accept as adequate to support a  
15 conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971). If the evidence is  
16 susceptible to more than one rational interpretation, the Court may not substitute its  
17 judgment for that of the ALJ. *Tackett*, 180 F.3d at 1097; *Morgan v. Commissioner*  
18 *of Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir. 1999). If substantial evidence  
19 supports the administrative findings, or if conflicting evidence supports a finding  
20 of either disability or non-disability, the ALJ's determination is conclusive.  
21 *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987). Nevertheless, a  
22 decision supported by substantial evidence will be set aside if the proper legal  
23 standards were not applied in weighing the evidence and making the decision.  
24 *Browner v. Secretary of Health and Human Services*, 839 F.2d 432, 433 (9th Cir.  
25 1988).

#### 26 SEQUENTIAL EVALUATION PROCESS

27 The Commissioner has established a five-step sequential evaluation process  
28 for determining whether a person is disabled. 20 C.F.R. § 404.1520(a); *Bowen v.*

1 *Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one through four, the burden of  
2 proof rests upon the claimant to establish a prima facie case of entitlement to  
3 disability benefits. *Tackett*, 180 F.3d at 1098-1099. This burden is met once a  
4 claimant establishes that a physical or mental impairment prevents the claimant  
5 from engaging in past relevant work. 20 C.F.R. § 404.1520(a)(4). If a claimant  
6 cannot perform past relevant work, the ALJ proceeds to step five, and the burden  
7 shifts to the Commissioner to show (1) the claimant can make an adjustment to  
8 other work; and (2) the claimant can perform specific jobs that exist in the national  
9 economy. *Batson v. Commissioner of Social Sec. Admin.*, 359 F.3d 1190, 1193-  
10 1194 (2004). If a claimant cannot make an adjustment to other work in the national  
11 economy, the claimant will be found disabled. 20 C.F.R. § 404.1520(a)(4)(v).

#### 12 **ADMINISTRATIVE FINDINGS**

13 On January 16, 2020, the ALJ issued a decision finding Plaintiff was not  
14 disabled as defined in the Social Security Act. Tr. 1288-1302.

15 At step one, the ALJ found Plaintiff had not engaged in substantial gainful  
16 activity from the alleged onset date through her date last insured. Tr. 1290.

17 At step two, the ALJ determined Plaintiff had the following severe  
18 impairments: thoracic outlet syndrome, cervical degenerative disc disease, left  
19 knee tricompartmental arthrosis and ACL reconstruction, headaches, fibromyalgia,  
20 and postural orthostatic tachycardia syndrome (POTS). Tr. 1291.

21 At step three, the ALJ found Plaintiff did not have an impairment or  
22 combination of impairments that met or medically equaled the severity of one of  
23 the listed impairments. Tr. 1293-94.

24 The ALJ assessed Plaintiff's Residual Functional Capacity (RFC) and found  
25 she could perform work with the following limitations:

26 Lift/carry 10 pounds occasionally and less than 10 pounds frequently,  
27 stand/walk 2 hours in an 8-hour workday, and sit 6 hours in an 8-hour  
28 workday. The claimant can occasionally climb ladders, ropes, or

1 scaffolds. The claimant can frequently perform all other postural  
2 actions. The claimant can occasionally reach overhead. The claimant  
3 can occasionally push/pull with the left lower extremity, such as  
4 operation of foot pedals. The claimant must avoid concentrated  
5 exposure to hazards (such as dangerous moving machinery). The  
6 claimant must avoid concentrated exposure to extreme cold and  
7 extreme heat.

8 The claimant has sufficient concentration to understand, remember,  
9 and carry out detailed and complex tasks, maintain persistence and  
10 pace in 2-hour increments with usual and customary breaks  
11 throughout an 8-hour workday.

12 Tr. 1294.

13 At step four, the ALJ found Plaintiff was capable of performing her past  
14 relevant work as a claims adjudicator, substance abuse counselor, and medical  
15 social worker. Tr. 1300-01.

16 The ALJ alternatively found at step five that, considering Plaintiff's age,  
17 education, work experience and residual functional capacity, there were other jobs  
18 that existed in significant numbers in the national economy that Plaintiff could  
19 perform, specifically identifying the representative occupations of addresser,  
20 charge account clerk, and final assembler. Tr. 1301-02.

21 The ALJ thus concluded Plaintiff was not under a disability within the  
22 meaning of the Social Security Act at any time from the alleged onset date through  
23 the date last insured. Tr. 1302.

## 24 ISSUES

25 The question presented is whether substantial evidence supports the ALJ's  
26 decision denying benefits and, if so, whether that decision is based on proper legal  
27 standards.

28 Plaintiff contends the Commissioner erred by (1) improperly weighing the  
opinions from Plaintiff's treating physicians; (2) improperly finding her mental  
health impairments to be non-severe at step two; (3) failing to account for

1 Plaintiff's inability to handle stress in the RFC; and (4) improperly assessing  
2 Plaintiff's subjective complaints.

### 3 DISCUSSION

#### 4 1. Treating Physicians' Medical Opinions

5 Plaintiff argues the ALJ erred in weighing the opinions from Plaintiff's  
6 treating doctors, Dr. Samuel Ortiz and Dr. James Byrd. ECF No. 16 at 4-8.

7 When a treating physician's opinion is contradicted by another physician,  
8 the ALJ is required to provide "specific and legitimate reasons" to reject the  
9 opinion. *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995). The specific and  
10 legitimate standard can be met by the ALJ setting out a detailed and thorough  
11 summary of the facts and conflicting clinical evidence, stating his interpretation  
12 thereof, and making findings. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir.  
13 1989). The ALJ is required to do more than offer his conclusions, he "must set  
14 forth his interpretations and explain why they, rather than the doctors', are  
15 correct." *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988). The opinions  
16 from Dr. Ortiz and Dr. Byrd are contradicted by the state agency non-examining  
17 doctors; therefore, the specific and legitimate standard applies.

18 In August 2014, Dr. Ortiz completed a letter regarding Plaintiff's POTS  
19 diagnosis, noting her syncopal episodes and chronic lightheadedness. Tr. 710. He  
20 stated that she could not sit for more than 10 minutes without being lightheaded  
21 and was unable to stand or walk without assistance. *Id.* She was unable to bend  
22 over, reach, stoop, crouch, or kneel without having orthostatic manifestations. *Id.*  
23 He noted that she generally needed to be close to a recliner, sofa, or bed in order to  
24 improve her symptoms when they arose. *Id.* He stated she was unable to work due  
25 to her severe orthostatic hypotension, and that she already had had difficulty  
26 working full time due to her thoracic outlet syndrome. *Id.*

27 In August 2016, Dr. James Byrd, Plaintiff's rheumatologist, completed a  
28 letter opining Plaintiff could lift less than ten pounds occasionally, could stand and

1 walk for less than two hours, and could sit for less than six hours, due to  
2 fibromyalgia and POTS. Tr. 1229-30. He further stated she was limited in all  
3 manipulative activities and environmental exposures, and could never perform  
4 postural activities. Tr. 1230-31. Dr. Byrd indicated that while treatment had  
5 improved her condition some, she may never get complete resolution of her  
6 symptoms. Tr. 1232. He closed by stating, “Given the severity of her symptoms I  
7 do not feel she is able to work in any meaningful way.” *Id.*

8 The ALJ gave these opinions little weight, finding they were partly based on  
9 Plaintiff’s thoracic outlet syndrome, POTS, and fibromyalgia, all of which the ALJ  
10 found to have either improved or to be unsupported by the objective record  
11 evidence. Tr. 1299. The ALJ further found the opinions relied in part of Plaintiff’s  
12 unreliable self-reports of symptoms, and that they infringed on an issue reserved to  
13 the Commissioner. *Id.* Finally, the ALJ found Dr. Ortiz’s opinion was not  
14 supported by the essentially unremarkable exam and Plaintiff’s report that she was  
15 doing well and able to complete her activities of daily living without too much  
16 trouble. Tr. 1300.

17 Plaintiff argues the ALJ improperly disregarded the opinions based on lack  
18 of objective findings for fibromyalgia, and asserts that the ALJ’s implication that  
19 her impairments improved would seem to indicate that she was at least entitled to a  
20 closed period of disability. ECF No. 16 at 6. Finally, Plaintiff argues the ALJ’s  
21 assessment of her subjective complaints was flawed, and therefore the rejection of  
22 the medical opinions on the basis of her self-reports being unreliable was also  
23 improper. *Id.* at 6. Defendant argues the ALJ appropriately assessed the opinions  
24 and found them inconsistent with the lack of objective evidence to support the  
25 extent of the assessed severity. ECF No. 17 at 11-12.

26 The Court finds the ALJ’s reasoning is not supported by substantial evidence  
27 and does not meet the specific and legitimate standard.

28 ///



1 *a. Thoracic outlet syndrome*

2 The ALJ found Dr. Ortiz and Dr. Byrd's opinions were due little weight  
 3 because their opinions were partly based on Plaintiff's thoracic outlet syndrome  
 4 despite thoracic outlet syndrome improving following surgery and physical exams  
 5 regularly showing normal range of motion in the shoulders. Tr. 1299. The Court  
 6 finds this rationale is not supported by substantial evidence. Plaintiff underwent  
 7 decompression surgery for her thoracic outlet syndrome in December 2014, four  
 8 months after Dr. Ortiz completed his opinion. Tr. 882. While the record reflects  
 9 improvement in her symptoms following surgery, Plaintiff continued to have  
 10 significant pain and numbness in her left arm and neck, as well as developing  
 11 symptoms in her right arm. Tr. 891-92, 1015, 1171, 1189, 1284, 2107, 2118, 2579.  
 12 Her physical therapist noted symptoms in her left hand were inconsistent and  
 13 dependent on what tasks she engaged in. Tr. 1150, 1199. Improvement in  
 14 symptoms is not synonymous with elimination of symptoms. Furthermore, the ALJ  
 15 failed to address whether the improvement in Plaintiff's symptoms correlated to a  
 16 change in her RFC.<sup>1</sup>

17 *b. POTS*

18 The ALJ partially discounted the opinions because they were based on  
 19 Plaintiff's POTS diagnosis, which the ALJ found had extensive benign workup and  
 20 was effectively managed with medication and cardiac rehab. Tr. 1299. Similar to  
 21 her arm and neck symptoms, Plaintiff experienced some improvement to POTS  
 22 following the reduction in her pain from thoracic outlet syndrome. Tr. 845, 854,  
 23 858. However, the record reflects she continued to experience dizziness and

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24  
 25 <sup>1</sup> Dr. Byrd's opinion, completed a year and a half after Plaintiff's surgery,  
 26 does not cite thoracic outlet syndrome; he noted fibromyalgia and POTS as the  
 27 medical bases for the limitations. Tr. 1230, 1232. Therefore, this rationale does not  
 28 apply to his opinion.



1 lightheadedness, with occasional intermittent syncopal episodes when she was  
2 stressed or in severe pain or engaged in rapid movements. Tr. 846, 854, 1188,  
3 1274, 2132, 2365, 2491-92, 2716. Dr. Ortiz noted in 2018 that even though her  
4 condition had improved, she continued to have some manifestations and he  
5 anticipated she would continue to have them in the years to come, though he was  
6 unable to predict when they would occur. Tr. 3596. Because Plaintiff continued to  
7 experience difficulties, the Court finds the ALJ's rationale is not supported by  
8 substantial evidence.

9 With respect to the benign workup, the cardiac findings cited by the ALJ did  
10 not indicate that POTS was not an established and accepted condition. Normal  
11 cardiac findings appear to have helped establish that her condition was indeed  
12 orthostatic hypotension as opposed to some problem with her heart. Tr. 368, 497,  
13 708, 794. All of her treating providers agree that POTS is an established condition,  
14 and the ALJ found it to be a severe medically determinable impairment. Therefore,  
15 it is unclear what the ALJ considered to be the significance of the benign cardiac  
16 workup. This is not a specific and legitimate basis for discounting the opinions of  
17 the treating doctors.

18 *c. Objective findings*

19 The ALJ found the "relatively unremarkable objective findings" did not  
20 corroborate Plaintiff's self-reports of symptoms to her providers, and that the  
21 medical opinions were out of proportion to the benign longitudinal exam findings.  
22 Tr. 1299. Referencing her earlier discussion of the objective findings, the ALJ  
23 noted records indicating Plaintiff routinely presented in no acute distress, fully  
24 alert/oriented, had normal gait and ambulated without difficulty, had grossly  
25 normal neurologic functioning, and had full range of motion and normal muscle  
26 bulk and tone. Tr. 1295-96, 1299.

27 The consistency of a medical opinion with the record as a whole is a  
28 legitimate factor for an ALJ to consider. 20 C.F.R. § 404.1527(c)(4). A conflict

1 between treatment notes and a treating provider's opinion may constitute an  
2 adequate reason to discredit the opinions of a treating physician or another treating  
3 provider. *See Molina v. Astrue*, 674 F.3d 1104, 1111-12 (9th Cir. 2012). However,  
4 substantial evidence does not support the ALJ's characterization of the objective  
5 findings as "relatively unremarkable."

6 Dr. Byrd consistently noted Plaintiff presented with classic fibromyalgia  
7 symptoms and greater than 11 tender points. Tr. 703, 796, 851, 897, 932, 957, 971,  
8 1270, 1634, 1648, 1830-31, 1833, 1841, 2048, 2062, 2430, 2647-48, 3526-27,  
9 3534, 3550, 3564. Plaintiff's chiropractor and physical therapist regularly  
10 documented findings supportive of her pain complaints, including positive straight  
11 leg raise tests, asymmetry and misalignment, muscle spasms, and various other  
12 objective measures. Tr. 1024, 1036-37, 1047-48, 1071, 1112, 1141-42, 1146, 2136-  
13 37, 2170, 2174, 2178, 2182, 2186, 2190, 2194, 2198, 2202, 2235, 2239, 2243-44,  
14 2248, 2252, 2256, 2260, 2264, 2268, 2272, 2276, 2309, 2313, 2321, 2792-96,  
15 2836, 2840, 2844, 2848, 2852, 2855-56. The ALJ's conclusion that there was not  
16 objective evidence to support the opinions cannot be upheld.

17 Furthermore, the Court takes note that fibromyalgia is not a condition that  
18 generally presents with extensive objective findings. *See generally, Revels v.*  
19 *Berryhill*, 874 F.3d 648, 656-57 (9th Cir. 2017); *Benecke v. Barnhart*, 379 F.3d  
20 587 (9th Cir. 2004); Social Security Ruling 12-2p. It is not clear that the normal or  
21 unremarkable exam findings identified by the ALJ, such as no neurological deficits  
22 and presenting in no acute distress, have any bearing on the existence or severity of  
23 Plaintiff's conditions, and the ALJ cited to no medical source that indicated as  
24 much. Therefore, this was not a specific and legitimate basis to reject Dr. Ortiz and  
25 Dr. Byrd's opinions.

26 *d. Plaintiff's self-reports*

27 The ALJ found Dr. Ortiz and Dr. Byrd relied in part on Plaintiff's unreliable  
28 self-reported symptoms and limitations. Tr. 1299. A doctor's opinion may be

1 discounted if it is “based to a large extent on a claimant’s self-reports that have  
2 been properly discounted as incredible.” *Tommasetti v. Astrue*, 533 F.3d 1035,  
3 1041 (9th Cir. 2008). However, when an opinion is not more heavily based on a  
4 patient’s self-reports than on clinical observations, there is no evidentiary basis for  
5 rejecting the opinion. *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014). The  
6 ALJ did not offer any support for her conclusion that the doctors relied more on  
7 Plaintiff’s self-reports than on their treatment, observations, and professional  
8 judgments. This rationale is not based on substantial evidence.

9 *e. Issue reserved to the Commissioner*

10 The ALJ found Dr. Ortiz and Dr. Byrd’s opinions infringed upon an issue  
11 reserved to the Commissioner, namely whether Plaintiff could perform her past  
12 work or other work. Tr. 1299. The regulations make clear that an opinion on an  
13 issue reserved to the Commissioner, such as whether a person is able to work, is  
14 not due “any special significance.” 20 C.F.R. § 404.1527(d). Therefore, the ALJ  
15 did not err in disregarding those portions of the doctors’ opinions that specifically  
16 comment on Plaintiff’s ability to work. However, the medical opinions both  
17 comment on work-related factors distinct from their conclusions that Plaintiff is  
18 not able to work. The fact that they also commented on the ultimate question of  
19 disability does not negate the substance of their other comments.

20 *f. Unremarkable exam and ability to complete activities*

21 Finally, the ALJ found Dr. Ortiz’s opinion was not supported by the  
22 “essentially unremarkable” exam and Plaintiff’s report that she was doing well and  
23 able to complete her activities of daily living without too much trouble. Tr. 1300.  
24 The citations provided by the ALJ were from exams a year after Dr. Ortiz  
25 completed his opinion. Tr. 854 (7/10/15), 863 (8/26/15). In July 2015, when  
26 Plaintiff’s cardiologist noted she was able to complete her activities without too  
27 much trouble, the provider noted her POTS symptoms were much improved, but  
28 she was still occasionally getting symptoms when she was overheated or had

1 increasing pain from her thoracic outlet syndrome, and that she was aware of the  
2 triggering activities. Tr. 856. In August 2015, Dr. Ortiz noted an essentially  
3 unremarkable exam apart from tenderness in her low back and that she was mildly  
4 orthostatic when she sat up after the exam. Tr. 863-64. He noted her POTS was  
5 much improved since her surgery for thoracic outlet syndrome. Tr. 864. To the  
6 extent the ALJ implied these normal results and comments were contemporaneous  
7 with Dr. Ortiz's August 2014 opinion, and thus a basis for rejecting it, the Court  
8 finds such a conclusion is not supported by substantial evidence. As noted above,  
9 the ALJ failed to discuss whether Plaintiff's improvement following her thoracic  
10 outlet syndrome warranted a change in the RFC.

## 11 **2. Step 2**

12 Plaintiff argues the ALJ erred in finding her mental health impairments to be  
13 non-severe at step two, and improperly rejected the opinions from the examining  
14 and non-examining psychological doctors. ECF No. 16 at 8-18.

15 The step-two analysis is "a de minimis screening device used to dispose of  
16 groundless claims." *Webb v. Barnhart*, 433 F.3d 683, 687 (9th Cir. 2005). An  
17 impairment is "not severe" if it does not "significantly limit" the ability to conduct  
18 "basic work activities." 20 C.F.R. § 404.1522(a). Basic work activities are  
19 "abilities and aptitudes necessary to do most jobs." 20 C.F.R. § 404.1522(b). "An  
20 impairment or combination of impairments can be found not severe only if the  
21 evidence establishes a slight abnormality that has no more than a minimal effect on  
22 an individual's ability to work." *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir.  
23 1996) (internal quotation marks omitted).

24 The ALJ found depression and generalized anxiety to be non-severe  
25 impairments. Tr. 1291. In doing so, she noted Plaintiff's minimal treatment for  
26 mental health conditions, largely unremarkable mental status findings, and that the  
27 mental symptoms appeared largely secondary to situational stressors. Tr. 1291-92.  
28 The ALJ gave significant weight to the 2014 psychological consultative exam

1 conducted by Dr. MacLennan and less weight to the state agency reviewing  
2 doctors and the 2018 consultative exam report from Dr. Metoyer. Tr. 1292-93.

3 Plaintiff argues the ALJ improperly rejected all of the opinions regarding  
4 Plaintiff's mental health, and thus the step two finding was not supported by  
5 substantial evidence. ECF No. 16 at 8-18. Defendant argues the ALJ reasonably  
6 considered the evidence and that her finding of non-severe mental impairments is  
7 supported by substantial evidence. ECF No. 17 at 13-21. The Court finds the ALJ  
8 reasonably interpreted the evidence and offered sufficient reasons for rejecting the  
9 opinions that assessed limitations on Plaintiff's mental functioning.

10 *a. Dr. MacLennan*

11 In 2014, Plaintiff attended a psychological consultative exam with Dr.  
12 Catherine MacLennan. Tr. 749-54. Dr. MacLennan diagnosed major depressive  
13 disorder secondary to a health condition, and stated that there likely would be  
14 times Plaintiff was less capable because of her weakness, dizziness, and  
15 medication side effects, but Plaintiff's psychological problems would not by  
16 themselves prevent her from working. *Id.* The ALJ gave this opinion significant  
17 weight, finding that Plaintiff's minimal treatment and unremarkable mental status  
18 exams throughout the record supported the conclusion that her mental impairments  
19 were not severe. Tr. 1292.

20 Plaintiff argues the ALJ erred by giving this opinion significant weight, yet  
21 failing to find major depression to be a severe impairment or including any  
22 limitations on mental functioning in the RFC. ECF No. 16 at 10-12. Defendant  
23 argues the opinion does not contain any functional limitations and the ALJ  
24 reasonably interpreted the opinion. ECF No. 17 at 14-15. The Court finds the ALJ  
25 did not err. Dr. MacLennan did not assess any limitations on Plaintiff's cognitive  
26 or social abilities and did not state that her mental impairments were severe enough  
27 to impair her ability to work. Tr. 749-54. Therefore, the ALJ did not reject the  
28 opinion.

1           ***b. Dr. Metoyer***

2           In 2018, Plaintiff attended another consultative psychological exam, with  
3 Dr. Patrick Metoyer. Tr. 1853-57. Dr. Metoyer assessed Plaintiff with generalized  
4 anxiety disorder and major depressive disorder. He found she had some mild to  
5 moderate impairment in interacting with others and completing a normal workday  
6 and stated her ability to deal with usual stress would be markedly impaired if a job  
7 involved persistent activity, complex tasks, task pressure, or interacting with  
8 individuals. Tr. 1857.

9           The ALJ gave this opinion little weight, finding it was not supported by the  
10 normal testing and finding it inconsistent with longitudinal evidence of  
11 unremarkable presentation and evidence indicating Plaintiff's mental disorders  
12 were effectively managed with medication. Tr. 1293. The ALJ further noted Dr.  
13 Metoyer was unaware of Plaintiff's longitudinal presentation because he reviewed  
14 limited records, and that he relied in part on Plaintiff's unreliable self-reports. *Id.*

15           Plaintiff argues the ALJ improperly substituted her own interpretation of Dr.  
16 Metoyer's exam findings and asserts the opinion is consistent with Dr. MacLennan  
17 and the state agency opinions, and thus is not inconsistent with the longitudinal  
18 evidence. ECF No. 16 at 14. She further argues that the ALJ's assessment of her  
19 subjective complaints was flawed, and it was Social Security who provided Dr.  
20 Metoyer with limited records. *Id.* at 14-16. Defendant argues the ALJ's reasons  
21 were all legitimate and supported by substantial evidence. ECF No. 17 at 17-21.

22           The Court finds the ALJ did not err. When an examining physician's opinion  
23 is contradicted by another physician, the ALJ is required to provide "specific and  
24 legitimate reasons" to reject the opinion. *Lester v. Chater*, 81 F.3d 821, 830-31  
25 (9th Cir. 1995). Dr. Metoyer's opinion is contradicted by Dr. MacLennan.

26           An ALJ may legitimately consider an opinion's consistency with the record  
27 and the source's familiarity with the record. 20 C.F.R. § 404.1527(c). While  
28

1 Plaintiff offers an alternative interpretation of the record, the ALJ's interpretation  
2 was reasonable.

3 *c. State agency reviewing doctors*

4 The state agency doctors who reviewed Plaintiff's file at the early  
5 administrative stages concluded her mental impairments were severe, and assessed  
6 some varying limitations, including avoiding speed and precision, working at a  
7 slowed pace, and needing to avoid more than occasional contact with the public.  
8 Tr. 76, 84, 95-96, 100-01. In 2018, state agency reviewing doctors found  
9 depression and anxiety to be severe impairments, but noted Plaintiff had no  
10 cognitive limits and retained the capacity to carry out complex tasks, and was  
11 limited only to occasional superficial interactions with the public. Tr. 1389, 1394-  
12 95, 1404-05, 1410.

13 The ALJ stated she gave these opinions less weight than she gave to Dr.  
14 MacLennan, noting that the same rationale for finding mental health impairments  
15 to be non-severe applied to the state agency doctors as well. Tr. 1292. Plaintiff  
16 argues the ALJ failed to offer sufficient reasons for rejecting these opinions. ECF  
17 No. 16 at 17. Defendant argues that the ALJ reasonably relied on the evidence of  
18 normal mental status exams and other unremarkable clinical findings in  
19 determining that Plaintiff's mental health impairments were non-severe. ECF No.  
20 17 at 15-17.

21 For the reasons discussed above, the Court finds the ALJ did not err, and  
22 reasonably considered the opinions' consistency with the record as a whole in  
23 finding the opinions were due less weight.

24 **3. Plaintiff's subjective allegations**

25 Plaintiff contends the ALJ erred by improperly rejecting her subjective  
26 complaints. ECF No. 16 at 18-20.

27 It is the province of the ALJ to make determinations regarding the  
28 reliability of a claimant's allegations. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th



1 Cir. 1995). However, the ALJ's findings must be supported by specific, cogent  
2 reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Once the  
3 claimant produces medical evidence of an underlying medical impairment, the ALJ  
4 may not discredit testimony as to the severity of an impairment merely because it  
5 is unsupported by medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th  
6 Cir. 1998). Absent affirmative evidence of malingering, the ALJ's reasons for  
7 rejecting the claimant's testimony must be "specific, clear and convincing."  
8 *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996); *Lester v. Chater*, 81 F.3d  
9 821, 834 (9th Cir. 1996). "General findings are insufficient: rather the ALJ must  
10 identify what testimony is not credible and what evidence undermines the  
11 claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v. Shalala*, 12 F.3d 915,  
12 918 (9th Cir. 1993).

13 The ALJ found Plaintiff's impairments could reasonably be expected to  
14 cause the alleged symptoms; however, she found Plaintiff's statements concerning  
15 the intensity, persistence and limiting effects of her symptoms were not entirely  
16 consistent with the medical evidence and other evidence in the record. Tr. 1295.  
17 Specifically, the ALJ found Plaintiff's complaints were inconsistent with the  
18 benign examination findings, evidence that her POTS was well-controlled with  
19 medication and her thoracic outlet syndrome improved following surgery, and  
20 several other discrepancies in the record. Tr. 1295-98.

21 An ALJ may reasonably consider a claimant's statements to the Agency and  
22 to her medical providers and consider the consistency of such statements. Social  
23 Security Ruling 16-3p. The ALJ noted that Plaintiff's testimony concerning the  
24 frequency of her syncopal episodes, particularly during the summer, conflicted  
25 with the medical evidence in the file, which documented far fewer episodes. Tr.  
26 1297. The Court finds the ALJ reasonably found Plaintiff's testimony on this topic  
27 to be less than fully reliable.

28 ///



1 The District Court Executive is directed to file this Order and provide a copy  
2 to counsel for Plaintiff and Defendant. Judgment shall be entered for Plaintiff and  
3 the file shall be **CLOSED**.

4 **IT IS SO ORDERED.**

5 DATED March 1, 2021.

A handwritten signature in black ink, appearing to be "M", is written above a horizontal line.

JOHN T. RODGERS  
UNITED STATES MAGISTRATE JUDGE